

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE RAMON HERNANDEZ,

Defendant.

Criminal No. 97-228 (JAF)

**UNITED STATES' MOTION TO CONVERT RE-SENTENCING HEARING INTO
STATUS CONFERENCE**

COMES NOW, The United States of America, by and through the undersigned attorneys and, respectfully states and prays as follows:

1. This Honorable Court has set a sentencing hearing for the above-captioned defendant for January 9, 2007 at 1:30 p.m.
2. The purpose of this motion is to clarify certain matters for the purpose of the record, and to request that the Court hold a further status conference instead of a re-sentencing hearing.
3. As this Court is aware, and as indicated by the First Circuit Court of Appeals, this case is still before the Court on defendant's motion for new trial. However, at a prior status conference, the Court asked the parties to first consider the possibility of some sort of agreement that would eliminate the need to hold an evidentiary hearing, thereby rendering defendant's motion moot. To that end, the Government promptly provided the defendant with an eminently reasonable offer of 180 months of imprisonment, especially since he is serving a sentence of 293 months of imprisonment. That offer remains open to defendant. However, defendant has not notified the Government that he has accepted the offer.
4. Instead, the defendant is attempting to take advantage of the situation by asking the Court

to re-sentence him, not according to an agreement between the parties, but to a sentence that would amount to time served. That request is neither acceptable, nor fair to the United States, and we oppose the same.

5. The United States submits that unless defendant notifies his intention to accept the Government's offer of 15 years, which is a reasonable offer given the circumstances, there is no agreement between the parties, and the case remains pending for a hearing on defendant's motion for a new trial. At that hearing, the Court would need to hear from defendant's witnesses and determine whether or not the magistrate judge correctly determined that a new trial was warranted.
6. As such, the United States requests a final term, up to and including January 8, 2007, to determine whether or not the defendant will accept the Government's offer. If that offer is not accepted, the Government requests that the motion for new trial be considered by the Court, as outlined in our filing dated September 6, 2006 (Docket #259).

WHEREFORE, in view of the foregoing, it is respectfully requested that the Court take consideration of the above and rule accordingly. **RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 3rd day of January, 2007.

Rosa E. Rodriguez Velez
United States Attorney

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Certificate of Service

I HEREBY CERTIFY that on this date, I electronically filed the foregoing with the Clerk of
the Court using the CM/ECF system which will send notification of such filing to the attorneys of
record for the defendant.

At Hato Rey, Puerto Rico, January 3, 2007.

s/Timothy R. Henwood
U.S.D.C. No. 218608